

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 188 of 2021

Md. Abdul Hakim, aged about 44 years, S/O (L) Md. Abdul Hei, resident of Santhel Awang Leikai, P.O. & P.S. Mayang Imphal, District Thoubal, Manipur – 795132 now serving as Graduate Teacher on contract basis under the Waqf Board, Manipur.

... PETITIONER

-VERSUS-

1. The State of Manipur represented by the Secretary (Minority Affairs), Government of Manipur, CM Secretariat, Babupara, P.O. & P.S. Imphal, District Imphal West, Manipur – 795001.
2. The Director (Minority Affairs), Government of Manipur, Directorate of Minority Affairs, 1st Floor, South Block, Secured Office Complex, Near 2nd MR Gate, North AOC, P.O. & P.S. Imphal, District Imphal West, Manipur – 795001.
3. The Chief Executive Officer, Waqf Board, Manipur, Office of the Waqf Board, Manipur, Hafiz Hatta, Minuthong, P.O. Imphal, P.S. Porompat, District Imphal East, Manipur – 795001.

... RESPONDENTS

WP(C) No. 192 of 2021

Md. Nashir Hussain, aged about 40 years, S/O Md. Nashir Ali, resident of Irong Chesaba Mayai Leikai, P.O. & P.S. Thoubal, District Thoubal, Manipur - 795138 now serving as Graduate Teacher on contract basis under the Waqf Board, Manipur.

... PETITIONER

-VERSUS-

1. The State of Manipur represented by the Secretary (Minority Affairs), Government of Manipur, CM Secretariat, Babupara, P.O. & P.S. Imphal, District Imphal West, Manipur - 795001.
2. The Director (Minority Affairs), Government of Manipur, Directorate of Minority Affairs, 1st Floor, South Block, Secured Office Complex, Near 2nd MR Gate, North AOC, P.O. & P.S. Imphal, District Imphal West, Manipur - 795001.
3. The Chief Executive Officer, Waqf Board, Manipur, Office of the Waqf Board, Manipur, Hafiz Hatta, Minuthong, P.O. Imphal, P.S. Porompat, District Imphal East, Manipur - 795001.

... RESPONDENTS

W.P.(C) No. 193 of 2021

Ms. Sajida Sahani, aged about 42 years, D/O (L) Md. Bashiruddin, resident of Haoreibi Yangbi Leikai, P.O. & P.S. Lilong, District Thoubal, Manipur – 795130 now serving as Graduate Teacher on contract basis under the Waqf Board, Manipur.

... PETITIONER

-VERSUS-

1. The State of Manipur represented by the Secretary (Minority Affairs), Government of Manipur, CM Secretariat, Babupara, P.O. & P.S. Imphal, District Imphal West, Manipur – 795001.

2. The Director (Minority Affairs), Government of Manipur, Directorate of Minority Affairs, 1st Floor, South Block, Secured Office Complex, Near 2nd MR Gate, North AOC, P.O. & P.S. Imphal, District Imphal West, Manipur – 795001.
3. The Chief Executive Officer, Waqf Board, Manipur, Office of the Waqf Board, Manipur, Hafiz Hatta, Minuthong, P.O. Imphal, P.S. Porompat, District Imphal East, Manipur – 795001.

... *RESPONDENTS*

BEFORE

HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN

For the Petitioner	::	Mr. N. Zequeson, Adv. Mr. Th. Monish, Adv.
For the Respondents	::	Mr. Sh. Shyam Sharma, GA Mr. HS Paonam, Sr. Adv. Mr. N. Bipin, Adv.
Date of Hearing and reserving Judgment & Order	::	02.08.2023
Date of Judgment & Order	::	22.08.2023

JUDGMENT AND ORDER
(CAV)

W.P.(C) No.188 of 2021 has been filed by the petitioner for issuance of a writ of mandamus directing the respondents to consider the case of the petitioner for regularisation by convening a Special DPC as has been done in the case of other similarly situated persons and to pay the due remuneration to the petitioner for his services rendered on contract basis as Graduate Teacher, Mathematics at Islamia

Madrassa, Sora under the Waqf Board, Manipur since his initial appointment till date.

2. W.P.(C) No.192 of 2021 has been filed by the petitioner to quash the impugned Government letter dated 21.7.2020 issued by the Secretariat, Minority Affairs Department, Government of Manipur, and to consider the case of the petitioner for regularisation by convening a Special DPC as has been done in the case of other similarly situated persons and to pay the due remuneration to the petitioner for his services rendered on contract basis as Graduate Teacher, Mathematics at Islamia Madrassa, Sora under the Waqf Board, Manipur since his initial appointment till date.

3. W.P.(C) No.193 of 2021 has been filed by the petitioner to quash the impugned Government letter dated 21.7.2020 issued by the Secretariat, Minority Affairs Department, Government of Manipur, and to consider the case of the petitioner for regularisation by convening a Special DPC as has been done in the case of other similarly situated persons and to pay the due remuneration to the petitioner for her services rendered on contract basis as Graduate Teacher, Mathematics at Haoreibi Lairabakhong Arabic Madrassa, Lairabakhong under the Waqf Board, Manipur since her initial appointment till date.

4. Since the issue that boils down for consideration is one and the same, all three writ petitions were heard together and disposed of by this common judgment.

5. Brief facts which led to the filing of the writ petitions are as follows:

W.P.(C) No.188 of 2021:

The Waqf Board, Manipur, invited applications from qualified Muslim candidates for appointment of 150 posts of Graduate Teachers on contract basis in Traditional Madrassas under the Madrassa Modernisation Scheme of the Waqf Board, Manipur, vide advertisement dated 1.9.2010. Pursuant to the said advertisement, the petitioner applied and took part in the recruitment process. He was not included in the list of 150 candidates appointed under order dated 24.11.2011, however, he was placed in the waiting list at Serial No.1 for Mathematics subject.

Thereafter, pursuant to the resolution of the Waqf Board dated 20.2.2013, the petitioner was appointed as Graduate Teacher, Mathematics, on contract basis for a period of one year. However, his appointment was cancelled subsequently by the order dated 29.6.2013 of the Chairman,

Waqf Board purportedly on the ground that the earlier appointment order was issued by the unauthorised and incompetent persons. Subsequently, when several other replacement teachers were appointed in pursuance of a resolution of the Board, the petitioner was also included and he was appointed vide order dated 1.10.2015 and he had also joined duty on 3.10.2015. When the regularisation order dated 17.4.2017 was issued regularising the services of 120 contract teachers, the petitioner was not included. The petitioner and six others complained before the Additional Chief Secretary (MA/OBC & SC), Government of Manipur, for allowing them to appear before the Re-Verification Committee so that their cases can also be considered for regularisation.

Accordingly, the petitioner and others were allowed to appear before the Committee and their documents were also verified by the Committee on 18.9.2019. Upon verification, he was found eligible for regularisation by the Committee and he was included in the list of 29 teachers recommended for regularisation at Serial No.5. However, vide letter dated 20.3.2020, the State Government gave approval for regularisation of 27 teachers leaving the petitioner without

assigning any reason despite the recommendation of the Committee.

According to the petitioner, he has been continuously rendering services till date. On 7.11.2020, the petitioner has submitted a representation for payment of remuneration for his services rendered on contract basis from the date of initial appointment, followed by another representation dated 19.12.2020 for regularisation of his service. The 17 contract teachers regularised vide order dated 28.9.2020 issued by the Waqf Board are replacement teachers appointed by the Waqf Board similarly to the petitioner. When 17 replacement teachers appointed similarly to the petitioner have been regularised, leaving him after exploiting his service for almost 8 years that too without payment of any remuneration is not only illegal but also utterly inhuman and unreasonable and violation of Articles 14, 16 and 21 of the Constitution of India.

5.1. The respondent State filed affidavit-in-opposition stating that as per the decision taken by the State Cabinet in its meeting held on 24.11.2016, the Government conveyed approval to the creation and regularisation of 150 posts of existing teachers under Madrassa Modernisation Scheme subject to verification of their qualification as notified earlier by the Waqf

Board, Manipur at the time of recruitment. The order dated 17.4.2017 issued by the CEO, Waqf Board has been cancelled by the State Government vide order dated 1.3.2018 . Since the Election Code of Conduct for the General Election to the State Legislative Assembly came into force on 4.1.2017, there was not enough time for verification of the educational qualifications and other mandatory procedures of 150 teachers. In addition, vide letter dated 8.5.2017, there was instruction not to issue any orders for regularisation of teachers/staff in Waqf Board and, accordingly, the CEO in his letter dated 23.5.2017 had complied the same. However, the CEO, Waqf Board in another letter dated 17.4.2017 had issued order for regularisation of 120 out of 150 existing teachers which is a case of back dating and issuing of the order without Government's approval due to which the order dated 17.4.2017 has been cancelled by the State Government vide order dated 1.3.2018.

It is stated that the Government has conveyed approval for regularisation of 27 years vide order dated 20.3.2020, however, the same letter has been cancelled by the Government vide letter dated 27.4.2020. The name of the petitioner was not included in the list of 150 teachers submitted by the CEO. Hence, his case was not considered for

regularisation. The Government has re-examined the regularisation of 150 teachers as there were many discrepancies and then approved for regularisation of 113 teachers out of initially engaged 150 contractual teachers and also decided not to consider regularisation of 21 teachers who have been found to be replacements for the initially engaged teachers as approval as well as the Cabinet decision were not obtained for such replacements. The name of the petitioner was not included amongst the 21 teachers who have been found to be replacements for the initially engaged teachers in the list, out of which 17 teachers have been regularised after due approval of the State Cabinet and Special DPC held on 19.9.2020. Hence, the petitioner's claim is found to be invalid. The question of discrimination against the petitioner does not arise.

5.2. The respondent Waqf Board filed affidavit in opposition stating that the term of contract of the petitioner has not been extended after 2017 and the petitioner is no longer in service in Waqf Board after the expiry of the term of its contract in the eyes of law. Therefore, the petitioner has no right to claim for regularisation on the basis of his irregular contract appointment after 4/5 years of the expiry of its term. As such, the writ petition is not maintainable. The petitioner was appointed

without prior approval of the Government and after expiry of the validity of the DPC proceedings. Since the petitioner was not included in the initially appointed 150 teachers, the case of the petitioner was not considered. The re-verification was done based on the initially appointed 150 teachers, but left out in the earlier verification. The petitioner, who was not included among the initially appointed 150 teachers, is not eligible for consideration. As per the cabinet decision, the re-verification should be based on the initially appointed 150 teachers. Therefore, inclusion of any teachers which were not included among the initially appointed 150 teachers will not be legally sustainable. The recommendation of the Re-verification Committee was put on hold by the Government vide order dated 27.4.2020. The panel of the DPC lapsed long ago and the petitioner was appointed much later that too without the approval of the Government. If the petitioner is aggrieved by the regularisation of those teachers, he has to challenge their regularisation. The petitioner has no right to claim for regularisation on the basis of illegal order on the basis of negative equality.

W.P.(C) No.192 of 2021:

5.3. The petitioner was appointed as Graduate Teacher, Mathematics, on contract basis for a period of one year on 1.10.2015 as replacement teacher pursuant to the resolution passed by the Waqf Board. He joined the service at his place of posting on 3.10.2015. In the first regularisation order dated 17.4.2017 issued by the Board for regularisation of 120 contract teachers, the petitioner was included at Serial No.51. In the second regularisation, among 27 teachers approved for regularisation by the State Government vide order dated 20.3.2020, the petitioner was included at Serial No.4. However, vide the impugned letter dated 21.7.2020, the State Government has decided not to consider the cases of 21 contract teachers for regularisation, including the petitioner, on the ground that they are not found to be replacements for the initially engaged teachers under the Madrassa Modernisation Scheme and that prior approval of the State Cabinet had not been obtained for such replacements.

According to the petitioner, he has been continuously rendering service till date. On 11.1.2020, the petitioner has submitted a representation for payment of remuneration for his services rendered on contract basis from the

date of initial appointment, followed by another representation dated 14.12.2020 for regularisation of his service. The 17 contract teachers regularised vide order dated 28.9.2020 are similar to the petitioner. The petitioner is eligible in all respects for appointment as Graduate Teacher under the Madrassa Modernisation Scheme of Waqf Board, Manipur in terms of the advertisement dated 1.9.2010 read with the corrigendum dated 9.10.2010. When 17 other replacement teachers appointed similarly to the petitioner have been regularised, leaving the petitioner after exploiting his service for almost 8 years that too without payment of any remuneration is not only illegal, but also violative of Articles 14, 16 and 21 of the Constitution of India.

5.4. The respondent State filed affidavit in opposition stating that as per the decision taken by the State Cabinet in its meeting held on 24.11.2016, the Government conveyed approval to the creation and regularisation of 150 posts of existing teachers under Madrassa Modernisation Scheme subject to verification of their qualification as notified earlier by the Waqf Board, Manipur at the time of recruitment. The order dated 17.4.2017 issued by the CEO, Waqf Board has been cancelled by the State Government vide order dated 1.3.2018. Since the Election Code of Conduct for the General Election to the State

Legislative Assembly came into force on 4.1.2017, there was not enough time for verification of the educational qualifications and other mandatory procedures of 150 teachers. In addition, vide letter dated 8.5.2017, there was instruction not to issue any orders for regularisation of teachers/staff in Waqf Board and, accordingly, the CEO in his letter dated 23.5.2017 had complied the same. However, the CEO, Waqf Board in another letter dated 17.4.2017 had issued the order for regularisation of 120 out of 150 existing teachers which is a case of back dating and issuing of the order without Government's approval due to which the order dated 17.4.2017 has been cancelled by the State Government vide order dated 1.3.2018.

It is stated that the Government had decided not to consider the cases of 21 teachers for regularisation vide letter dated 21.7.2020, as they were found to be replacement teachers who were engaged without the prior approval of the Department and the State Cabinet. Subsequently, the Department decided to consider their cases for placing before the Cabinet for regularisation. During further examination of their cases, it was found that Md. Nashir Hussain was not amongst the replacement teachers as per the list furnished by the CEO. Therefore, his name was omitted from the list to be placed before the Cabinet.

It is also stated that the claim of the petitioner that non-consideration of the petitioner by the Special DPC in its meeting held on 19.9.2020 for regularisation of contract teachers of Madrassa Modernisation Scheme is completely illegal and arbitrary. The petitioner has not challenged in the present writ petition any of the letters conveying approval or withholding regularisation and, as such, the petitioner is not aggrieved by the same. Since the name of the petitioner did not figure in the list of teachers to be placed before the Special DPC held on 19.9.2020, the claim of the petitioner for consideration of the case cannot be accepted. The petitioner has also not laid down any valid grounds for challenging the impugned letter dated 21.7.2020.

5.5. The respondent Waqf Board filed affidavit-in-opposition stating that the term of contract of the petitioner has not been extended after 2016 and the petitioner is no longer in service in Waqf Board after the expiry of the term of its contract in the eyes of law. Therefore, the petitioner has no right to claim for regularisation on the basis of his irregular contract appointment after 4/5 years of the expiry of its term. As such, the writ petition is not maintainable. The petitioner was appointed without prior approval of the Government and after expiry of the

validity of the DPC proceedings. The order dated 17.4.2017 issued by the CEO, Waqf Board has been cancelled by the State Government vide order dated 1.3.2018. The petitioner was not considered for regularisation as he was not among the initially appointed 150 teachers with the approval of the Government and the verification was for the initially appointed 150 teachers only. The 36 teachers included in the re-verification were among those initially appointed 150 teachers, but left out in the first verification. As per the Cabinet decision, the re-verification should be based on the initially appointed 150 teachers. Therefore, inclusion of any teachers which were not included among the initially appointed 150 teachers will not be legally sustainable. The recommendation of the Re-verification Committee was put on hold by the Government vide order dated 27.4.2020.

W.P.No.193 of 2021:

5.6. The petitioner was appointed as Graduate Teacher, Mathematics, on contract basis for a period of one year as a replacement teacher pursuant to the resolution dated 1.10.2015 and joined the service on 3.10.2015. In the first regularisation order dated 17.4.2017 issued by the Board for regularisation of the services of 120 contract teachers, the petitioner was included at Serial No.62. During the process of the second regularisation,

the petitioner appeared before the Committee and her original documents were verified. However, she was not recommended for regularisation on the ground that she is a graduate in Botany and she did not study Maths and was marked as ineligible. Whereas, in respect of another contract teacher, namely Sh. Fakharuddin Ali Ahamad, who was also appointed as Graduate Teacher in Mathematics despite being a graduate in B.Sc. Zoology, the same Committee found him eligible and included in the list of 29 teachers recommended for regularisation with a condition for issuing corrigendum for change of subject from Maths to Science. Even during the process of second regularisation, the petitioner was discriminated. Under the Government letter dated 21.7.2020, the petitioner was included at Serial No.11 in the list of 21 teachers who were not considered for regularisation on the ground of being a replacement teacher.

According to the petitioner, she has been continuously rendering services till date. On 5.11.2020, the petitioner has submitted a representation for payment of remuneration for her services rendered on contract basis from the date of initial appointment. She had also submitted another representation dated 21.12.2020 for regularisation of her service and if necessary by changing her subject from Mathematics to

Science. The petitioner is eligible in all respects for appointment as Graduate Teacher under the Madrassa Modernisation Scheme of Waqf Board, Manipur, in terms of the advertisement dated 1.9.2010. When 17 other replacement teachers appointed similarly to the petitioner have been regularised, leaving the petitioner after exploiting her service for almost 8 years that too without payment of any remuneration is not only illegal but also violative of Articles 14, 16 and 21 of the Constitution of India.

5.7. The respondent State filed affidavit-in-opposition stating that as per the decision taken by the State Cabinet in its meeting held on 24.11.2016, the Government conveyed approval to the creation and regularisation of 150 posts of existing teachers under Madrassa Modernisation Scheme subject to the verification of their qualifications as notified earlier by the Waqf Board, Manipur at the time of recruitment. The order dated 17.4.2017 issued by the CEO, Waqf Board, has been cancelled by the State Government vide order dated 1.3.2018. The petitioner was amongst the 21 teachers who were found to be replacements for the initially engaged teachers as per the list furnished by the CEO and they were engaged without Administrative Department's approval as well as without Cabinet approval. Therefore, the Government has decided not to

consider their cases for regularisation vide letter dated 21.7.2020, whereas another teacher namely Sh. Fakharuddin Ali Ahamad was recommended by the Re-verification Committee. However, the same has been withheld and his case was not considered by the State and he has not been regularised to his service till date.

It is stated that the petitioner was appointed on contractual basis as Maths teacher initially, however, the Re-verification Committee for regularisation of 36 teacher held on 9.9.2019 disapproved her case as she did not study Maths as one of the subjects. As such, the claim of the petitioner that non-consideration of the petitioner by the Special DPC in its meeting held on 19.9.2020 for regularisation of contract teachers of Madrassa Modernisation Scheme, Waqf Board, Manipur is completely illegal and arbitrary. The petitioner has not made out any valid ground for challenging the impugned order/letter.

5.8. The respondent Waqf Board filed affidavit in opposition stating that the term of contract of the petitioner has not been extended after 2016 and the petitioner is no longer in service in Waqf Board after the expiry of the term of its contract in the eyes of law. Therefore, the petitioner has no right to claim for regularisation on the basis of his irregular contract

appointment after 4/5 years of the expiry of its term. As such, the writ petition is not maintainable. The petitioner was appointed without prior approval of the Government and after expiry of the validity of the DPC proceedings. The re-verification was only in respect of the teachers initially appointed 150 teachers, but left out in the first verification. Since the petitioner was not included in the initially appointed 150 teachers, the case of the petitioner was not considered. The petitioner cannot claim regularisation and there cannot be a negative equality. Since petitioner joined the service without the approval of the State Government and without the recommendation of the DPC, the petitioner, as a matter of right, cannot claim regularisation.

6. Mr. N. Zequeson, the learned counsel for the petitioners submitted that all the three petitioners are replacement teachers, who have been appointed by a resolution of the Waqf Board similarly to the 17 teachers regularized on 28.9.2020 and that the decision of the State Government conveyed under the impugned letter dated 21.7.2020 for non-consideration of regularization of replacement teachers is no longer holds good, as the State authorities have subsequently regularized 17 such replacement teachers. Therefore, the impugned letter dated 21.7.2020 cannot be a bar for

regularization of the petitioners. In fact, the respondent authorities have picked and chosen their favoured persons and regularized 17 replacement teachers, leaving the petitioners without giving any reason.

7. The learned counsel for the petitioners further submitted that the petitioners have been discriminated and without giving any information, the impugned order came to be passed violating the principles of natural justice. Thus, the action of the State authorities amounts to treating equals as unequal in violation of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India.

8. The learned counsel for the petitioners urged that the petitioners have obtained RTI information wherefrom they came to know that there are 5 vacancies at present in the posts of Primary/Under Graduate teachers under the Madrassa Modernization Scheme of the Waqf Board, Manipur and the respondent authorities may be directed to regularize the services of the petitioners against the post of Primary/Under Graduate teachers.

9. It is also the submission of the learned counsel for the petitioners that the petitioners are not given any remuneration

during their contract service and the non-payment of remuneration of services rendered amounts to deprivation of the right to life and livelihood guaranteed under Article 21 of the Constitution of India. Hence, necessary direction may be issued to the respondent authorities to pay the due remuneration entitled to the petitioners for the services rendered by them on contract basis since their initial appointments.

10. By placing on record, the decision of the Hon'ble Supreme Court in the case of *All India Imam Organisation and others v. Union of India and others*, (1993) 3 SCC 584 and the judgment/order passed by this Court in *W.P.(C) No.357 of 2018 dated 19.3.2020*, Mr. HS Paonam, the learned senior counsel for the petitioners submitted that the petitioners are rendering service in the Madrassas which are under the administrative supervision of the Waqf Board, Manipur and, as such, the Board must fulfil its bounden duty and responsibility to pay remuneration to the petitioners and the financial difficulties or otherwise of the Board cannot be above the fundamental rights of the petitioners. Further, when other similarly situated individuals appointed on contract basis were regularized, the non-consideration of the case of the petitioners who are similarly

situated, is against the well settled decisions of the Hon'ble Supreme Court.

11. Mr. Sh. Shyam Sharma, the learned Government Advocate for the respondent State submitted that the Government had decided not to consider the cases of 21 teachers for regularization vide impugned letter, as they were found to be replacements who were engaged without the prior approval of the Department and the State Cabinet. During further re-examination of their cases, it was found that the petitioner Md. Nashir Hussain was not amongst the replacement teachers as per the list furnished by the CEO of the Waqf Board and, therefore, his name was omitted from the list to be placed before the Cabinet. As the name of the petitioner Md. Nashir Hussain was not included in the list of teachers to be placed before the Special DPC, it was not necessary to inform him.

12. The learned Government Advocate further submitted that the Government has re-examined the regularization of 150 teachers as there were many discrepancies and then approved for regularization of 113 teachers out of initially engaged 150 contractual teachers and also decided not to consider regularization of 21 teachers who have been found to be replacements for the initially engaged teachers as the

Administrative Department's approval as well as the State Cabinet decision were not obtained for such replacements and therefore, the issuance of the impugned letter dated 21.7.2020 does not warrant interference.

13. The learned Government Advocate would submit that the name of the petitioner Md. Abdul Hakim was not included amongst the 21 teachers who have been found to be replacements for the initially engaged teachers in the list furnished by the CEO, out of which 17 teachers have been regularized after due approval of the State Cabinet and Special DPC held on 19.9.2020. Hence, his claim is found to be invalid. Therefore, the plea of the petitioner Md. Abdul Hakim that his name has been illegally left out from regularization is contrary to the available materials.

14. Adding further, the learned Government Advocate argued that the Government had decided not to consider the case for regularization vide impugned letter dated 21.7.2020, whereas another teacher namely Sh. Fakharuddin Ali Ahamad was recommended by the Re-verification Committee. The petitioner Sajida Sahani was appointed on contractual basis as Maths teacher initially, however, the Re-verification Committee for regularization of 36 teachers held on 19.9.2019 disapproved

her case, as she did not study Maths as one of the subjects. Therefore, the claim of the petitioner Sajida Sahani that the Special DPC failed to consider her case is not well founded. The petitioner Sahida Sahani has not been illegally left out from regularization.

15. The learned counsel for the respondent Waqf Board submitted that the re-verification was only in respect of the initially appointed 150 teachers who were left out in the first verification. The petitioners' cannot claim for regularization as a matter of right and there cannot be negative equality. In a catena of decisions, the Hon'ble Supreme Court observed that Article 14 of the Constitution of India does not envisage negative equality. If there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply or be relied upon as a principle of parity or equality. As the petitioners joined the service without the approval of the State Government and without the recommendation of the DPC, the petitioners cannot claim regularization as a matter of right.

16. By placing on record the decision of the Hon'ble Supreme Court in the case of *Basawaraj and another v. Special Land Acquisition Officer, (2013) 14 SCC 81*, the learned counsel

for the respondent Waqf Board submitted that Article 14 of the Constitution of India is not meant to perpetuate illegality or fraud even by extending wrong decisions made in other cases. Any relief granted by inadvertence or mistake cannot create a legal right to get the same relief.

17. This Court considered the rival submissions and also perused the materials available on record.

18. The grievance of the petitioner in W.P.(C) No.188 of 2021 is that when the CEO, Waqf Board, Manipur issued notices directing all concerned teachers to appear in person along with original documents before the Re-verification Committee, the said notice was not served upon him and other five teachers and they complained before the Additional Chief Secretary for allowing them to appear before the Re-verification Committee. The petitioner Md. Abdul Hakim and others were allowed to appear before the Re-verification Committee and upon verification, the petitioner Md. Abdul Hakim was found eligible for regularization by the Committee and accordingly he was included in the list of 29 teachers recommended for regularization. While so, the Secretariat, MOBC Department conveyed approval to the regularization of only 27 teachers

under the Madrassa Modernisation Scheme vide letter dated 20.3.2020 and the petitioner Md. Abdul Hakim was left out.

19. The case of the petitioner in W.P.(C) No.192 of 2021 is that while the Secretariat, MOBC Department conveyed approval to the regularization of 27 teachers under the Madrassa Modernization Scheme vide letter dated 20.3.2020, his name was included at Serial No.4. However, for the reasons best known to the respondent authorities, in the subsequent letter dated 27.4.2020 directed the CEO to withhold and not to issue any orders qua letter dated 20.3.2020. The Government conveyed its approval for regularization of 17 contract teachers vide letter dated 28.9.2020 and on the same day, the CEO issued an order for regularization of the said 17 contract teachers. According to the petitioner, all the said 17 teachers were included along with the petitioner Md. Nashir Hussain in the list of 27 contract teachers whose earlier approval was withheld by the State Government. Furthermore, all the said 17 teachers were also included along with petitioner Md. Nashir Hussain in the list of 21 contract teachers who were in terms of the impugned letter dated 21.7.2020 not considered for regularization on the ground that they were found to be replacements for the initially engaged teachers under the Madrassa Modernisation Scheme and that

prior approval of the State Cabinet had not been obtained for such replacements.

20. Similarly, the case of the petitioner in W.P.(C) No.193 of 2021 is that pursuant to the notice issued, the petitioner Sajida Sahani appeared before the Committee and her original documents were verified. However, she was not recommended for regularization on the ground that she is a graduate in Botany and she did not study Maths. Further, it is also conveyed that the State Government has decided not to consider the cases of 21 contract teachers for regularization, including the petitioner Sajida Sahani on the ground that they are found to be replacements for the initially engaged teachers under the Madrassa Modernisation Scheme and that prior approval of the State Cabinet had not been obtained for such replacements.

21. The common case of the petitioners is that in view of the recent regularization of 17 contract teachers of Madrassa Modernisation Scheme and also taking into consideration the approval conveyed earlier for regularization of the petitioners and others, the respondent authorities are duty bound to consider the case of the petitioners for regularization again by constituting a Special DPC.

22. The relevant portion of the impugned letter reads thus:

“Further, 21 (twenty one) teachers have also been found to be replacements for the initially engaged teachers under Madrassa Modernization Scheme and their details are enclosed as Annexure-III. As prior approval of the State Cabinet had not been obtained for such replacements, the Government has decided not to consider their case for regularization.”

24. The reason given for non-consideration of the petitioners for regularization by the Government is on the ground that they are found to be replacements for the initially engaged teachers under the Madrassa Modernisation Scheme and that prior approval of the State Cabinet had not been obtained for such replacements. Such ground taken by the respondent authorities is not a valid ground for the simple reason that the Government has already reviewed its decision in respect of 17 contract teachers who are similarly situated to the petitioners by considering and approving their cases for regularization vide letter dated 28.9.2020. It is not the case of the respondents that the petitioners herein have not fulfilled the requisite educational qualifications and other criteria.

25. The petitioner in W.P.(C) No.188 of 2021 passed Higher Secondary Examination; completed graduation with B.Sc. in Mathematics (Honours) from Manipur University; passed Teacher Eligibility Test and Diploma in Elementary Education. The petitioner in W.P.(C) No.192 of 2021 passed Higher Secondary Examination, completed graduation with B.Sc. in General Course from Manipur University and obtained Diploma in Elementary Education. The petitioner in W.P.(C) No.193 of 2021 passed High Secondary Examination, completed graduation with B.Sc. in General Course from Manipur University and obtained Diploma in Elementary Education.

26. The petitioner in W.P.(C) No.193 of 2021 got work experience as Assistant Teacher in Crescent English School, Lilong Bazar, Manipur for 10 years with effect from 10.9.2000 to 10.09.2010. The petitioner in W.P.(C) No.192 of 2021 got work experience as Assistant Teacher in S.A. Educational Institute, Irong Chesaba prior to his appointment as Graduate Teacher on contract basis under the Madrassa Modernisation Scheme of Waqf Board, Manipur with effect from 01.1.2006. The petitioner in W.P.(C) No.188 of 2021 got work experience as Mathematics Teacher in Thounaojam Ibobi Memorial English School since February 2006 till September, 2010.

27. According to the learned counsel for the petitioners, the petitioner Md. Abdul Hakim was the first candidate in the waiting list when 150 teachers were appointed on contract basis vide order dated 24.11.2011 pursuant to the advertisement dated 1.9.2010. If any person is to be regularized apart from the 150 teachers initially appointed vide order dated 24.11.2011, the petitioner Md. Abdul Hakim has to be considered first.

28. Mr. N. Zequeson, the learned counsel for the petitioners submitted that the petitioners in W.P.(C) Nos.188 and 192 of 2021 are continuing in service at Islamia Madrassa, Sora till date and the petitioner in W.P.(C) No.193 of 2021 is continuing in service at Haoreibi Lairabakhong Arabic Madrassa till date.

29. From the from the records available, the following facts emerge:

- The petitioner Md. Abdul Hakim was initially appointed in Mathematics subject under the Scheme for Modernization of Traditional Madrassas in Manipur Waqf Board on contract basis for a period of one year vide order dated 1.10.2015 issued by the CEO and he has been posted at Islamia Madrassa, Sora and had joined the

service on 3.10.2015. Vide order dated 5.10.2016, the period of his contract was extended and still serving as Graduate Teacher.

- The petitioner Md. Nashir Hussain was initially appointed as Graduate Teacher, Mathematics on contract basis for a period of one year under the Scheme of Modernisation of Traditional Madrassas in Manipur Waqf vide order dated 1.10.2015 and has been posted at Islamia Madrassa, Sora and had joined duty on 3.10.2015. Vide order dated 2.1.2016, the contract service was extended for another one year with effect from 25.11.2015 to 24.11.2016. Still serving as Graduate Teacher.
- The petitioner Sajida Sahani was initially appointed as Graduate Teacher in Mathematics under the Scheme for Modernisation of Traditional Madrassas in Manipur Waqf on contract basis for a period of one year on 1.10.2015 and the petitioner had joined duty on 3.10.2015 at

Haoreibi Lairaba Khong Arabic Madrassa, Lairabakhong. Her service was regularized vide order dated 17.4.2017 issued by the CEO along with other similarly situated persons. By the order dated 17.4.2017, the same has not been given effect. However, she is serving as Graduate Teacher till date.

- By the interim order dated 25.2.2021, this Court directed to reserve one post of Primary/Under Graduate Teacher each during the pendency of the present writ petitions and the said interim order has been extended until further orders vide order dated 9.8.2021.

30. When we analyse the case individually, this Court finds that in the case of the petitioner in W.P.(C) No.192 of 2021, in the first and second regularization, his name was included, but the same was not given effect to. Whereas, in the third regularization, he was not at all considered and left out without any notice or information to the petitioner. In the case of W.P.(C) No.193 of 2021, in the first regularization, the petitioner was

included, but was not given effect. In the second regularization, she was not recommended, however, another similarly situated person was recommended. Whereas, in the third regularization, she has not been considered and left out without any notice. In the case of the petitioner in W.P.(C) No.188 of 2021, in the first regularization, he was not included. However, during the process of second regularization, he was allowed to appear before the Committee and upon verification, he was found eligible for regularization by the Committee and his name was included in the list of 29 teachers recommended for regularization. However, while the State Government gave approval for regularization of 27 teachers, his name was left out without assigning any reason despite the recommendation made by the Committee.

31. On a perusal of the records, it is seen that the petitioners have submitted their representations separately on 14.12.2020, 19.12.2020 and 21.12.2020 requesting for regularization as Graduate Teachers under the Madrassa Modernization Scheme, Waqf Board, Manipur. It is not in dispute that the said representations have been received by the CEO, Waqf Board, Manipur and till date, the same have not been considered and disposed of.

32. According to the petitioners, despite proper and satisfactory re-verification, no regularization order has been issued in their favour and in order to show their continuance in service, they have been issued with duty certificates. In fact, 17-25 teachers have been regularized behind the back of the petitioners which is highly mala fide, illegal and discriminatory and violative of the fundamental right of equality guaranteed under Articles 14 and 16 of the Constitution of India.

33. On the other hand, it is the say of the respondent State that the names of the petitioners do not figure in the list of teachers to be placed before the Special DPC held on 19.9.2020. Hence, the claim of the petitioners for consideration of their case cannot be accepted.

34. Similarly, the case of the respondent Waqf Board is that the petitioners were appointed without prior approval of the Government and after expiry of the validity of the DPC proceedings. Since the petitioners joined the service without the approval of the State Government and without the recommendation of a DPC, the petitioners, as a matter of right, cannot claim regularization.

35. This Court is of the view that when the initial appointments of the petitioners are pursuant to the recommendations made by the competent authority, it cannot be contended that petitioners have joined the duty without the approval of the State Government. On a perusal of the appointment orders of the petitioners, it is clear that their appointments on contract basis are against the vacant posts. For example, in the appointment order of the petitioner in W.P.(C) No.188 of 2021, it has been clearly stated that the petitioner Abdul Hakim was appointed as Teacher under the Scheme for Modernisation of Traditional Madrassas in Manipur of Wakf Board, Manipur as approved by the State Cabinet, Government of Manipur dated 23.6.2010 on contract basis. The duty certificates issued to the petitioners would also show that the petitioners are still serving. Though the third respondent in his affidavit-in-opposition stated that the duty certificates issued to the petitioners need to be verified because as per the information received, the petitioners have not been attending regularly, nothing has been produced to prove their stand. In the absence of any contrary evidence, based on the duty certificates produced by the petitioners, it is to be held that the petitioners are still serving as Graduate Teachers in their respective institutions.

36. It is pertinent to note that when the respondents questioned the initial appointment of the petitioners stating that the petitioners were appointed without the approval, it is not known how the respondent authorities are allowing the petitioners to serve till date. The decision of the respondent authorities not to consider the case of the petitioners on the ground that they are found to be replacements for the initially engaged teachers and that prior approval of the State Cabinet had not been obtained for such replacements is unacceptable.

37. The admitted position is that as on date, a total of 130 teachers have been regularized, out of which 113 teachers have been initially appointed on 24.11.2011 through open recruitment, while 17 teachers are replacement teachers appointed by the Board similarly to the petitioners. While being so, the non-consideration of the case of the petitioners would clearly show the discrimination. The said action of the respondent authorities would amount to treating equals as unequal in violation of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India. The contention of the petitioners is that the State authorities have picked and chosen their favoured persons out of the blue and regularized 17 replacement teachers leaving the petitioners without giving any

reason. The respondents have failed to prove that the said contention is a false contention.

38. Taking into consideration the overall facts and circumstances of the case, this Court is of the view that grievance/claim of the petitioners needs to be considered by the respondent authorities in the light of the regularization made to the similarly situated persons, as the petitioners are serving in the said post for the past 8 years. No record has been produced by the respondent authorities to show that the petitioners are not serving under the Scheme of Modernisation of Traditional Madrassas in Manipur. As stated supra, in the absence of any contra evidence produced by the respondents, it is to be held that the petitioners are still serving in the posts and only based on the services now rendering by them, the duty certificates have been issued to them. Since the initial appointments of the petitioners are based on the recommendation and similarly situated persons have been given regularization, it is not appropriate on the part of the respondent authorities in not considering the claim of the petitioners both for regularization as well as payment of due remuneration for their services rendered on contract basis since their initial appointment till date. That apart, the interim order of this Court reserving one post each is operating against the

respondents till date. As rightly argued by the learned counsel for the petitioners, the decision of the State Government conveyed under the impugned letter dated 21.07.2020 for non-consideration of regularization of the replacement teachers no longer holds goods, as the respondent State have subsequently regularized 17 such replacement teachers.

39. It is the case of the petitioners that they have been discriminated and that too behind their back and without giving any intimation, violating the principles of natural justice, the impugned letter has been addressed. There is nothing on record to show that before issuing the impugned letter, all of them were heard. Therefore, this Court is of the view that the impugned letter dated 21.07.2020 is in violation of the principles of natural justice and the said letter cannot be a bar now for regularization of the petitioners. There is also no impediment in any manner for not considering the case of the petitioners and the respondent authorities are bound to convene a Special DPC for consideration of the case of the petitioners in the same manner as has been done in the case of several other contract teachers similarly situated to them.

40. The further case of the petitioners is that their services have been continuously exploited and they have been

suffering without any salary/remuneration and they are also facing acute financial problems. With regard to the said allegation, the counter of the respondent State is to the effect that *“the answering deponent has no comment”*. The reply of the third respondent is also to the effect that *“as per the information received, the petitioners have not been attending regularly”*. As stated supra, the duty certificates produced by the petitioners clearly indicate that they are still serving in their respective institutions. Therefore, it cannot be contended that the petitioners are not serving till date as alleged by the respondents. Utilization of the service of the petitioners without any pay and remuneration amounts to exploitation of service, which is illegal. Further, such an action of the authorities amounts to depriving the very livelihood of the petitioners and also violates the fundamental right to life guaranteed under Article 21 of the Constitution of India.

41. For all the reasons stated above, this Court is of the view that the petitioners have established their case for regularization as has been done in the case of other similarly situated persons and also established that without any pay and remuneration, their services have been continuously exploited by the respondents.

42. In the result,
- (i) These writ petitions are allowed.
 - (ii) The impugned letter dated 21.07.2010 issued by the Secretariat, Minority Affairs Department, Government of Manipur is set aside in respect of the petitioners.
 - (iii) The respondent authorities are directed to consider the case of the petitioners for regularization by convening a Special DPC as has been done in the case of other similarly situated persons.
 - (iv) The respondent authorities are directed to pay the due remuneration to the petitioners for their services rendered on contract basis as Graduate Teachers since their initial appointment till date.
 - (v) The aforesaid exercises shall be completed within a period of three months from the date of receipt of a copy of this order.
 - (vi) There will be no order as to costs.

ACTING CHIEF JUSTICE

FR/NFR

Sushil